

# **INJUNCTIONS PROHIBITING CIVIL HARASSMENT OR WORKPLACE VIOLENCE**

**[REVISED 2005]**



**ADMINISTRATIVE OFFICE  
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2005 by Judicial Council of California

Published October 2005; covers case law through 35 C4th, 131 CA4th, and all legislation to 1/1/2005

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**I. [§20.1] SCOPE OF BENCHGUIDE**

This benchguide provides an overview of the procedures for handling requests for a temporary restraining order (TRO) and injunction prohibiting civil harassment under [CCP §527.6](#) and workplace violence under [CCP §527.8](#). It contains procedural checklists for these two proceedings, and a summary of the applicable law. It also contains a script the court may use at the commencement of a civil harassment hearing on the plaintiff's petition for an injunction to advise the parties of the matters the court must consider in determining whether to grant an injunction.

**II. PROCEDURAL CHECKLISTS**

**A. Civil Harassment**

**1. [§20.2] Checklist: Issuing Temporary Restraining Order  
and Injunction Prohibiting Harassment**

(1) *Review the plaintiff's petition and application.* The plaintiff must use Judicial Council form CH-100. See Appendix. Judges who hear these cases should make sure that their courts make Judicial Council form CH-150, Instructions for Lawsuits to Prohibit Civil Harassment available to plaintiffs. This form provides specific instructions for completing the petition. See Appendix.

(2) *Determine that the plaintiff is a proper party to seek relief under [CCP §527.6](#).* The plaintiff must be a natural person, not an artificial entity, such as a corporation, partnership, or association. The plaintiff must also be the person who has suffered the harassment, *e.g.*, the plaintiff may not be a parent who is suing for relief for his or her child in a capacity other than as a guardian ad litem. [CCP §527.6\(a\)](#). See [§20.7](#). If the plaintiff is a minor, special provisions apply. [CCP §374\(a\)](#). See [§20.45](#).

(3) *If the plaintiff is seeking a TRO, determine whether the plaintiff has shown reasonable proof of harassment by the defendant and that the plaintiff will suffer great or irreparable harm if the TRO is not granted.* [CCP §527.6\(c\)](#). See [§20.9](#). The "harassment" must consist of unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at the plaintiff that seriously alarms, annoys, or harasses

the plaintiff, and that serves no legitimate purpose. [CCP §527.6\(b\)](#). See [§20.8](#); see also item (9) in [§20.3](#). If the conduct about which the plaintiff is complaining does not meet this statutory definition, the court may not provide relief, temporary or otherwise.

(4) *Issue a TRO if the plaintiff has made the required showings.* Set the matter for hearing within 15 days or, if good cause appears, 22 days, from the date of the TRO. [CCP §527.6\(d\)](#). See [§§20.9–20.10](#). Courts must use the Judicial Council form CH-120, Notice of Hearing and Temporary Restraining Order (CLETS). See Appendix. If the plaintiff shows good cause, the court has the discretion to issue a TRO that includes other named family or household members who reside with the plaintiff. [CCP §527.6\(c\)](#).

## **2. [[§20.3](#)] Checklist: Conducting Hearing on and Issuing Injunction Prohibiting Harassment**

(1) *Before the hearing on the plaintiff's petition for an injunction, determine that the defendant was properly served with a copy of the petition, the TRO, and notice of hearing on the petition.* Personal service is required in the manner provided for service of summons at least five days before the hearing, unless the court has shortened the time for service for good cause. [CCP §527.6\(g\)](#). See [§20.11](#). The proof of service should be made on Judicial Council form CH-130. See Appendix.

(2) *Before the hearing, determine that the plaintiff was properly served with the defendant's response to the petition.* The response must be filed and delivered to the plaintiff or the plaintiff's attorney no later than 48 hours before the hearing. See [Cal Rules of Ct 363\(d\)](#); [§20.12](#). The proof of service should be made on Judicial Council forms CH-130 or CH-131. See Appendix.

(3) *Review the defendant's response to the petition and any cross-complaint filed by the defendant.* The defendant must use Judicial Council form CH-110. See Appendix. The defendant may file a response that explains, excuses, justifies, or denies the alleged harassment, or may file a cross-complaint for an injunction prohibiting harassment. [CCP §527.6\(d\)](#). See [§20.12](#).

(4) *Before calling the calendar, advise the parties of the matters the court must consider in determining whether to grant an injunction.* See Script in [§20.46](#).

(5) *Determine if the parties are ready to proceed.* If a TRO has been issued without notice, the plaintiff must be ready to proceed when the matter first comes up for hearing, but the defendant is entitled to one continuance for a reasonable period of at least 15 days or any shorter period the defendant requests, to enable the defendant to meet the plaintiff's application. The TRO remains in effect until the date of the continued hearing. [CCP §§527\(d\), 527.6\(c\)](#). See [§20.13](#).

(6) *Ask the parties if they might be willing to consider mediation of their dispute.* If so, refer the case to mediation, and advise the parties that what happens during mediation is not admissible in any subsequent court proceeding. See [Evid C §1119](#).

(7) *If the parties wish to proceed to hearing, advise them that they have the right to present any relevant testimony, including oral testimony.* The court may not deny a party the opportunity to present oral testimony. But a full-fledged evidentiary hearing with oral testimony is not necessary, unless requested by a party. See [CCP §527.6\(d\)](#); [§20.14](#). Also advise the parties that the court may make an independent inquiry, *i.e.*, the court may question the parties and their witnesses.

(8) *If a support person is present at the hearing with a plaintiff who is appearing in pro per, advise the participants that the support person may sit with the plaintiff at the counsel table to provide moral and emotional support to the plaintiff, but may not give legal advice to the plaintiff.* See [CCP §527.6\(f\)](#); [§20.15](#).

(9) *If the court finds by clear and convincing evidence that unlawful harassment exists, it should issue the requested injunction.* The plaintiff must prove that he or she was subjected to one of the following: (a) unlawful violence, *i.e.*, assault, battery, or stalking; (b) a credible threat of violence, *i.e.*, a knowing and willful statement or course of conduct that would place a reasonable person in fear of his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose; or (c) a knowing and willful course of conduct directed at the plaintiff that seriously alarms, annoys, or harasses the plaintiff, and that serves no legitimate purpose. In addition, the plaintiff must show that the conduct, by its nature, would cause a reasonable person to suffer substantial emotional distress, and that this conduct did, in fact, cause the plaintiff substantial emotional distress. And the plaintiff must establish that great or irreparable harm would result to the plaintiff if an injunction is not issued because of the reasonable probability that unlawful violence will occur in the future. [CCP §527.6\(b\)](#); see [§20.8](#). The court is not required to make a specific finding on the record that harassment exists, or to cite to the statutory elements of harassment. See [§20.16](#). The court must use Judicial Council form CH-140 to issue the injunction. See Appendix. If the plaintiff shows good cause, the court has the discretion to issue an injunction that includes other named family or household members who reside with the plaintiff. [CCP §527.6\(c\)](#).

(10) *Determine if an award of attorney's fees and costs to the prevailing party is appropriate.* It is within the court's discretion to award the prevailing party costs and attorney's fees. See [§20.17](#).

(11) *Advise the parties of the duration of the injunction (maximum of three years).* Also advise the plaintiff that he or she may apply for renewal

of the injunction by filing a new petition at any time within three months before the injunction expires. See §20.18.

(12) *Advise the defendant that he or she may not own, possess, purchase, receive, or attempt to purchase or receive a firearm for the duration of the injunction.* Order the defendant to sell to a licensed gun dealer or turn in to the police any firearms that he possesses or controls within 24 hours. (Note: Sale or surrender of firearm must take place within 48 hours after receipt of order if defendant is not present at the hearing.)

(13) *Advise the defendant that he or she must file proof of sale or surrender of any firearm within 72 hours of receiving the order with the court.* See §20.44.

(14) *Advise the plaintiff that he or she must deliver a copy of the order to the law enforcement agencies specified in the order by the close of the business day on which the order is granted.* See §20.22.

## **B. Workplace Violence**

### **1. [§20.4] Checklist: Issuing Temporary Restraining Order Prohibiting Workplace Violence**

(1) *Review the plaintiff's petition and application.* The plaintiff must use Judicial Council form WV-100. See Appendix. Judges who hear these cases should make sure that their courts make Judicial Council form WV-150, Instructions for Petitions to Prohibit Workplace Violence, available to plaintiffs. This form, among other things, provides specific instructions for completing the petition. See Appendix.

(2) *Determine that the plaintiff is a proper party to seek relief under CCP §527.8.* The plaintiff must be the employer of a person who has suffered unlawful violence or a credible threat of violence. CCP §527.8(a). See §20.28.

(3) *If the plaintiff is seeking a temporary restraining order, determine whether the plaintiff has shown reasonable proof that the employee has suffered unlawful violence or a credible threat of violence by the defendant and that the employee will suffer great or irreparable harm if the TRO is not granted.* CCP §527.8(e). See §20.30. The “unlawful violence” must be assault, battery, or stalking. The “credible threat of violence” must be a knowing and willful statement or course of conduct that would place a reasonable person in fear of his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose. CCP §527.8(b). See §20.29; see also item (7) in §20.5. If the conduct about which the plaintiff is complaining does not meet this statutory definition, the court may not provide relief, temporary or otherwise.

(4) *Issue a TRO if the plaintiff has made the required showings.* Set the matter for hearing within 15 days from the date the petition is filed.



See §20.19. Courts must use the Judicial Council form WV-120. See Appendix. If the plaintiff shows good cause, the court has the discretion to issue a TRO that includes other named family or household members who reside with the employee. CCP §527.8(e).

## 2. [§20.5] Checklist: Conducting Hearing on and Issuing Injunction for Prohibiting Workplace Violence

(1) *Before the hearing on the plaintiff's petition for an injunction, determine that the defendant was properly served with a copy of the petition, the TRO, and notice of hearing on the petition.* Personal service is required in the manner provided for service of summons, at least five days before the hearing, unless the court has shortened the time for service for good cause. CCP §527.8(h). See §20.32. The proof of service should be made on Judicial Council form WV-130. See Appendix.

(2) *Before the hearing, determine that the plaintiff was properly served with the defendant's response to the petition.* The response must be filed and delivered to the plaintiff or the plaintiff's attorney no later than 48 hours before the hearing. See Cal Rules of Ct 363(d); §20.33. The proof of service should be made on Judicial Council forms WV-131 or WV-132. See Appendix.

(3) *Review the defendant's response to the petition and any cross-complaint filed by the defendant.* The defendant is required to use the Judicial Council form WV-110. See Appendix. The defendant may file a response that explains, excuses, justifies, or denies the alleged unlawful violence or credible threats of violence, or may file a cross-complaint for an injunction prohibiting workplace violence. CCP §527.8(f). See §20.33.

(4) *Determine if the parties are ready to proceed.* If a TRO has been issued without notice, the plaintiff must be ready to proceed when the matter first comes up for hearing, but the defendant is entitled to one continuance for a reasonable period of at least 15 days or any shorter period the defendant requests, to enable the defendant to meet the plaintiff's application. The TRO remains in effect until the date of the continued hearing. CCP §§527(d), 527.8(e). See §20.34.

(5) *Ask the parties if they might be willing to consider mediation of their dispute.* If so, refer the case to mediation, and advise the parties that what happens during mediation is not admissible in any subsequent court proceeding. See Evid C §1119.

(6) *If the parties wish to proceed to hearing, advise them that they have the right to present any relevant testimony, including oral testimony.* Also advise the parties that the court may make an independent inquiry, i.e., the court may question the parties and their witnesses. CCP §527.8(f). See §20.35.

(7) *If the court finds by clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of*

violence, it should issue the requested injunction prohibiting further unlawful violence or threats of violence. The plaintiff must also establish that great or irreparable harm would result to the employee if an injunction is not issued because of the reasonable probability that unlawful violence will occur in the future. See §20.36. The court must use Judicial Council form WV-140 to issue the injunction. See Appendix. If the plaintiff shows good cause, the court has the discretion to issue an injunction that includes other named family or household members who reside with the employee. CCP §527.8(e).

(8) *Advise the parties of the duration of the injunction (maximum of three years).* Also advise the plaintiff that he or she may apply for renewal of the injunction by filing a new petition at any time within three months before the injunction expires. See §20.37.

(9) *Advise the defendant that he or she may not own, possess, purchase, receive, or attempt to purchase or receive a firearm for the duration of the injunction.* Order the defendant to sell to a licensed gun dealer or turn in to the police any firearms that he possesses or controls within 24 hours. (Note: Sale or surrender of firearm must take place within 48 hours after receipt of order if defendant is not present at the hearing.)

(10) *Advise the defendant that he or she must file proof of sale or surrender of any firearm within 72 hours of receiving the order with the court.* See §20.44.

(11) *Advise the plaintiff that he or she must deliver a copy of the order to the law enforcement agencies specified in the order by the close of the business day on which the order is granted.* See §20.40.

### III. APPLICABLE LAW

#### A. [§20.6] General Background

Code of Civil Procedure §§527.6 (civil harassment) and 527.8 (workplace violence) set forth the requirements for statutorily created injunctions. They establish special procedures specifically designed to provide expedited injunctive relief to persons who have suffered civil harassment or who are under a credible threat of violence in the workplace. See *Huntingdon Life Sciences, Inc. v Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 CA4th 1228, 1250, 29 CR3d 521 (speech that constitutes “harassment” is not constitutionally protected); *Byers v Cathcart* (1997) 57 CA4th 805, 811, 67 CR2d 398. They provide for issuing injunctions of limited scope and limited duration. See 57 CA4th at 810–812 (CCP §527.6 is not intended to provide for summary determination of potentially complex issues, e.g., it cannot be used to resolve dispute over easement use); *Marquez-Luque v Marquez* (1987) 192 CA3d 1513, 1517–1519, 238 CR 172 (because CCP §527.6 protects

people, not property, court does not have authority to evict defendant who has threatened to damage property but not to harm plaintiff).

A person seeking an injunction under either statute need not make the showing that is generally required for the granting of injunctive relief. See [CCP §§527.6, 527.8](#). For example, neither statute requires that before the court may grant an injunction there must be a showing that a legal remedy (e.g., money damages) is an inadequate remedy. Nevertheless, in determining whether to issue such an injunction, the court should consider the general principles that

- Injunctive relief is designed to deter and not to punish (*Russell v Douvan* (2003) 112 CA4th 399, 401–402, 5 CR3d 137; *Scripps Health v Marin* (1999) 72 CA4th 324, 332, 85 CR2d 86);
- An injunction is an equitable remedy (*People v Sangiacomo* (1982) 129 CA3d 364, 367, 181 CR 90);
- A prior restraint is a disfavored remedy (*Hurvitz v Hoefflin* (2000) 84 CA4th 1232, 1241–1242, 101 CR2d 558); and
- A court should issue a mandatory injunction only on a clear showing that injury will result if the injunction is not issued (*Youngblood v Wilcox* (1989) 207 CA3d 1368, 1372 n1, 255 CR 527).

## **B. Temporary Restraining Order and Injunction Prohibiting Harassment (CCP §527.6)**

### **1. [§20.7] Who May Seek Relief**

A person who has suffered harassment (see §20.8) may seek a TRO and an injunction prohibiting harassment. [CCP §527.6\(a\)](#). The term “person” is limited to natural persons and does not include artificial entities such as corporations, partnerships, or associations. *Huntingdon Life Sciences, Inc. v Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 CA4th 1228, 1258, 29 CR3d 521 (animal testing laboratory cannot maintain cause of action against organization and individuals protesting laboratory’s activities); *Diamond View Ltd. v Herz* (1986) 180 CA3d 612, 618–619, 225 CR 651 (limited partnership not entitled to injunctive relief).

The plaintiff may appear in the proceeding by counsel or in pro per. [CCP §527.6\(e\)](#).

### **2. [§20.8] Harassment Defined**

- “*Harassment*” means unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. [CCP §527.6\(b\)](#).

- “*Unlawful violence*” is any assault, battery, or stalking, but does not include lawful acts of self-defense or defense of others. CCP §527.6(b)(1).
- “*Credible threat of violence*” is a knowing and willful statement or course of conduct that would place a reasonable person in fear of his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose. CCP §527.6(b)(2). The intent requirement for a true threat is that the defendant intentionally or knowingly communicates the threat; it is not necessary that the defendant intends to, or is able to carry out the threat. *Huntingdon Life Sciences, Inc. v Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 CA4th 1228, 1255–1256, 29 CR3d 521.

“*Course of conduct*” is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. CCP §527.6(b)(3); see *Leydon v Alexander* (1989) 212 CA3d 1, 4, 260 CR 253 (single incident of harassment is insufficient; potential different result in case involving verbal abuse amounting to credible threat of violence). It includes following or stalking an individual, making harassing telephone calls, or sending harassing correspondence by any means including mail, fax, or e-mail. CCP §527.6(b)(3). See *Brekke v Wills* (2005) 125 CA4th 1400, 1412–1414, 23 CR3d 609 (teenage boyfriend’s conduct constituted “course of conduct” against minor girlfriend’s parents; boyfriend sent three vitriolic letters to girlfriend knowing her mother would read them, he had earlier sent letters instructing girlfriend on retaliatory measures she could take against her parents for their restrictions on her, and he taunted mother on telephone). Constitutionally protected activity is not included within the term “course of conduct.” CCP §527.6(b). For example, filing a legal action does not constitute harassment because an individual has a constitutional right to petition for redress of grievances. See *Byers v Cathcart* (1997) 57 CA4th 805, 809, 67 CR2d 398; *Leydon v Alexander, supra*, 212 CA3d at 5; see also *Smith v Silvey* (1983) 149 CA3d 400, 406, 197 CR 15 (defendant could not be enjoined from initiating complaints about plaintiff with public agencies). The course of conduct must by its nature cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff. CCP §527.6(b); *Brekke v Wills, supra*, 125 CA4th at 1414–1415. For example, the court may not grant a TRO and preliminary injunction under CCP §527.6, enjoining a nuisance such as the noise from the use of a basketball court, without proof that the noise caused substantial emotional distress to the plaintiff. See *Schild v Rubin* (1991) 232 CA3d 755, 761–765, 283 CR 533. The phrase “substantial emotional distress” is not defined by CCP §527.6. But in the analogous context of the tort of intentional infliction of

emotional distress, the similar phrase “severe emotional distress” has been defined to mean highly unpleasant mental suffering or anguish “from socially unacceptable conduct,” that entails such intense, enduring, and nontrivial emotional distress that “no reasonable [person] in a civilized society should be expected to endure it.” 232 CA3d at 762–763.

[Code of Civil Procedure §527.6](#) is not intended to supplant normal injunctive procedures applicable to cases concerning issues other than harassment as defined in the statute. *Byers v Cathcart*, *supra*, 57 CA4th at 811. Conduct that is outside the definition of “harassment” cannot be enjoined under the summary procedures of [CCP §527.6](#), even if it might ultimately be enjoined under normal injunctive procedures after full development of the facts and law. *Byers v Cathcart*, *supra*, 57 CA4th at 812. For example, without substantial evidence of harassing conduct, a court may not use [CCP §527.6](#) to order a defendant to stay 25 feet away from the plaintiff who was conducting judgment debtor examinations in court. *Nebel v Sulak* (1999) 73 CA4th 1363, 1370, 87 CR2d 385.

### 3. [§20.9] Issuing a Temporary Restraining Order

The court may grant a TRO on the plaintiff’s petition and application, with or without notice, if the plaintiff shows reasonable proof of harassment by the defendant, and that he or she will suffer great or irreparable harm if the TRO is not granted. [CCP §527.6\(c\)](#); see [CCP §527.6\(m\)](#) (plaintiff must use Judicial Council form CH-100 for petition; court must use Judicial Council form CH-120 to issue TRO). Unless otherwise ordered, no memorandum of points and authorities is required. [Cal Rules of Ct 363\(b\)](#). No filing fee may be charged for a petition that alleges that the defendant has inflicted or threatened violence against the plaintiff, stalked the plaintiff, or acted or spoken in any other manner that has placed the plaintiff in reasonable fear of violence, and that seeks a restraining order or injunction restraining stalking, future violence, or threats of violence. [CCP §527.6\(p\)](#).

On a showing of good cause, the court has the discretion to issue a TRO that includes other named family or household members who reside with the plaintiff. [CCP §527.6\(c\)](#). The TRO remains in effect, at the court’s discretion, for up to 15 days or, if the court extends the time for hearing, for up to 22 days, unless otherwise modified or terminated by the court. [CCP §527.6\(c\)](#).

### 4. Subsequent Hearing

#### a. [§20.10] Time for Hearing

A hearing must be held within 15 days or, if good cause appears, 22 days from the date the TRO is issued. [CCP §527.6\(d\)](#); [Cal Rules of Ct 363\(a\)](#).

**b. [§20.11] Service on Defendant**

The defendant must be personally served with a copy of the petition for an injunction, TRO, and notice of hearing on the petition at least five days before the hearing. [CCP §527.6\(g\)](#); see Judicial Council forms CH-120, CH-130. Service must be made in the manner provided by law for personal service of the summons in a civil action. [Cal Rules of Ct 363\(c\)](#). For good cause, the court may shorten the time for service. [CCP §527.6\(g\)](#).

**c. [§20.12] Defendant's Response**

The defendant may file a response that explains, excuses, justifies, or denies the alleged harassment, or may file a cross-complaint for an injunction prohibiting harassment. [CCP §527.6\(d\)](#); see [CCP §527.6\(m\)](#) (defendant must use Judicial Council form CH-110); see also [CCP §527.6\(p\)](#) (when filing fee is not required). The response must be filed and delivered to the plaintiff or the plaintiff's attorney no later than 48 hours before the hearing. [Cal Rules of Ct 363\(d\)](#). The defendant may appear in the proceeding by counsel or in pro per. [CCP §527.6\(e\)](#).

**d. [§20.13] Continuance**

If the TRO has been issued without notice, the plaintiff must be ready to proceed when the matter first comes up for hearing. [CCP §§527\(d\)\(3\), 527.6\(c\)](#); *Adler v Vaicius* (1993) 21 CA4th 1770, 1775, 27 CR2d 32. The defendant is entitled to one continuance for a reasonable period of at least 15 days or any shorter period the defendant requests, to enable the defendant to meet the plaintiff's application. [CCP §527\(d\)\(4\)](#); *Adler v Vaicius, supra*, 21 CA4th at 1775–1776. The TRO remains in effect until the date of the continued hearing. [CCP §527\(d\)\(4\)](#).

**e. [§20.14] Evidence**

At the hearing, the court must receive any relevant testimony, whether oral or written. [CCP §527.6\(d\)](#); *Adler v Vaicius* (1993) 21 CA4th 1770, 1776, 27 CR2d 32. The court may also make an independent inquiry. [CCP §527.6\(d\)](#). The court may not deny a party the opportunity to present oral testimony. *Schraer v Berkeley Prop. Owners' Ass'n* (1989) 207 CA3d 719, 730–733, 255 CR 453 (court should not have refused introduction of oral testimony and should not have based its decision entirely on written declarations, documentary evidence, and arguments of counsel). However, it is the parties' obligation to ensure that their witnesses are present at the hearing and ready to testify. See 207 CA3d at 732 n5. Both sides may offer evidence by deposition, affidavit, or oral testimony, and the court must receive this evidence, subject only to reasonable limitations necessary to preserve the expeditious nature of the



harassment procedure. A full-fledged evidentiary hearing with oral testimony is not necessary, unless requested by a party. See *Ensworth v Mullvain* (1990) 224 CA3d 1105, 1110–1111, 274 CR 447; *Schraer v Berkeley Prop. Owners' Ass'n*, *supra*, 207 CA3d at 733 n6. Direct testimony from the plaintiff that he or she suffered substantial emotional distress is not required for the court to issue an injunction; the plaintiff's declaration may be sufficient. *Ensworth v Mullvain*, *supra*, 224 CA3d at 1110–1111.

*Testimony of mental health practitioner.* Although communications between a patient and a psychotherapist are confidential and privileged under Evid C §1012, the “dangerous patient” exception to the psychotherapist-patient privilege permits disclosure of any threatening communications of the patient if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to himself or herself or to the person or property of another and that disclosure of the communications are necessary to prevent the threatened harm. Evid C §1024.

#### **f. [§20.15] Presence of Support Person at Hearing**

If there are allegations or threats of domestic violence, a support person may accompany the plaintiff in court. CCP §527.6(f). If the plaintiff is appearing in pro per, the support person may sit with the plaintiff at the counsel table. CCP §527.6(f). The support person may not give legal advice, but is allowed to be present to provide moral and emotional support to the plaintiff. CCP §527.6(f). The court has the discretion to remove the support person from the courtroom if the court believes that the support person is prompting, swaying, or influencing the plaintiff. CCP §527.6(f).

### **5. Issuance of Injunction**

#### **a. [§20.16] Findings**

If the court finds by clear and convincing evidence that unlawful harassment exists, it must issue an injunction prohibiting the harassment. CCP §527.6(d); see Judicial Council form CH-140. The plaintiff must also establish that great or irreparable harm would result to the plaintiff if an injunction is not issued because of the reasonable probability that unlawful violence will occur in the future. *Russell v Douvan* (2003) 112 CA4th 399, 401–404, 5 CR3d 137 (trial court erred in issuing injunction based on a single act of violence without finding threat of future harm). When read literally, the language of CCP §527.6(d) appears to provide that once the plaintiff establishes by clear and convincing evidence that the defendant has engaged in a single act of harassment, the court must issue an injunction. But CCP §527.6(d) must be read to include the requirement

that the plaintiff show that great or irreparable harm is likely to occur absent the injunction because the plaintiff is required to make such a showing under [CCP §527.6\(c\)](#) to obtain a TRO. 112 CA4th at 402–404.

The court is not required to make a specific finding on the record that harassment exists, or to cite the statutory elements of the harassment. Although there must be evidence to support the required elements of harassment and substantial emotional distress, direct testimony by the plaintiff is not required to establish or support those elements. See *Ensworth v Mullvain* (1990) 224 CA3d 1105, 1112, 274 CR 447.

**b. [§20.17] Award of Costs and Fees**

The court may award the prevailing party court costs and attorneys’ fees. [CCP §527.6\(i\)](#). See *Leydon v Alexander* (1989) 212 CA3d 1, 5, 269 CR 253 (award is discretionary); see also [§20.12](#). Because [CCP §527.6\(i\)](#) does not define “prevailing party,” the court may use the general definition of “prevailing party” in [CCP §1032](#). *Adler v Vaicius* (1993) 21 CA4th 1770, 1777, 27 CR2d 32; *Elster v Friedman* (1989) 211 CA3d 1439, 1443–1444, 260 CR 148 (court properly awarded fees and costs to plaintiffs even though terms of injunction entered under stipulated settlement applied to them as well as to defendants, because plaintiffs obtained the precise relief they had sought).

**c. [§20.18] Duration of Injunction**

The maximum duration of the injunction is three years. [CCP §527.6\(d\)](#). At any time within three months before its expiration, the plaintiff may apply for renewal of the injunction by filing a new petition. [CCP §527.6\(d\)](#). If no expiration date is indicated on the injunction order, the order is presumed to run for three years. See Judicial Council form CH-140 in Appendix.

**d. [§20.19] Persons Covered**

On a showing of good cause, the court has the discretion to issue an injunction that includes other named family or household members who reside with the plaintiff. [CCP §527.6\(c\)](#); [§20.9](#).

**e. [§20.20] Forms**

A TRO or injunction issued under [CCP §527.6](#) must be issued on forms adopted by the Judicial Council that have been approved by the Department of Justice. [CCP §527.6\(n\)](#); see Judicial Council form CH-120, CH-140. But the fact that an order is not issued on such a form does not make it unenforceable. [CCP §527.6\(n\)](#). The court may provide an unofficial translation of a court order issued under [CCP §527.6](#), in a language other than English. [CCP §185\(a\)](#).



#### **f. [§20.21] Mutual Injunctions**

The court may not grant mutual injunctions, absent express consent by the plaintiff, against both the plaintiff and the defendant at a hearing on the plaintiff's petition for an injunction against the defendant, unless the defendant has filed a cross-complaint, as permitted by [CCP §527.6\(d\)](#), and the plaintiff is given notice of the cross-complaint and an opportunity to respond to it. *Kobey v Morton* (1991) 228 CA3d 1055, 1058–1060, 278 CR 530. See also *Nora v Kaddo* (2004) 116 CA4th 1026, 1029, 10 CR3d 862 (trial court erred in issuing mutual injunctive relief when court refused to hear witnesses offered by both parties, and defendant did not file a cross-complaint but merely requested mutual injunctions at the close of the proceedings).

#### **6. [§20.22] Transmission of Order to Law Enforcement Agencies**

By the close of the business day on which the order is granted, the court must order the plaintiff or the plaintiff's attorney to deliver a copy of each TRO or injunction to the law enforcement agencies that may be called on to enforce the injunction. See [CCP §527.6\(h\)](#) (plaintiff may request transmission to certain agencies but designation of agencies is within court's discretion).

Information on any TRO or injunction relating to harassment or domestic violence issued by a court under [CCP §527.6](#) must be transmitted to the Department of Justice in accordance with [Fam C §6380\(b\)](#). [CCP §527.6\(o\)](#).

#### **7. [§20.23] Subsequent Award of Fees and Costs**

On the expiration of the TRO or the plaintiff's dismissal of the action, the court retains jurisdiction to grant the defendant's motion for attorney's fees and costs as the prevailing party. *Adler v Vaicius* (1993) 21 CA4th 1770, 1774–1777, 27 CR2d 32.

#### **8. [§20.24] Effect of Defendant's Bankruptcy Petition**

When the plaintiff files a petition for an injunction under [CCP §527.6](#) and the defendant subsequently files a petition in bankruptcy, the automatic stay provisions of federal bankruptcy law ([11 USC §362\(a\)](#)) do not apply to the plaintiff's petition unless the injunction interferes with the bankruptcy case. An action to enjoin harassment will not generally interfere with a bankrupt debtor's estate or threaten the role of the automatic stay in protecting both the debtor and the debtor's creditors. *Grant v Clampitt* (1997) 56 CA4th 586, 590–592, 65 CR2d 727. However, any award of costs and fees to the plaintiff as the prevailing party is required to be stayed under [11 USC §362\(a\)](#). 56 CA4th at 593.

## 9. [§20.25] Violation of Injunction

Any willful disobedience of any TRO or injunction is punishable under [Pen C §273.6](#). [CCP §527.6\(j\)](#). [Penal Code §273.6](#) provides that any intentional and knowing violation of an order issued under [CCP §527.6](#) is a misdemeanor punishable by a fine of up to \$1000 and/or by imprisonment in the county jail for up to one year. [Pen C §273.6\(a\)](#). Any violation of the order that results in physical injury is punishable by a fine of up to \$2000 and/or by imprisonment in the county jail for not less than 30 days nor more than one year. [Pen C §273.6\(b\)](#). However, if a defendant is imprisoned in county jail for at least 48 hours, the court may, in the interest of justice, reduce or eliminate the 30-day minimum imprisonment. [Pen C §273.6\(b\)](#).

A subsequent conviction for violation of [Pen C §273.6\(a\)](#), occurring within seven years of a prior conviction and involving an act of violence or a credible threat of violence, is punishable by imprisonment in the county jail for up to one year or in state prison. [Pen C §273.6\(d\)](#). A subsequent conviction occurring within one year of a prior conviction that results in physical injury is punishable by a fine of up to \$2000 and/or by imprisonment in county jail for not less than six months nor more than one year, or by imprisonment in state prison. [Pen C §273.6\(e\)](#). However, if a defendant is imprisoned in county jail for at least 30 days, the court may, in the interest of justice, reduce or eliminate the six-month minimum imprisonment. [Pen C §273.6\(e\)](#).

A defendant who is convicted of owning, possessing, purchasing, or receiving a firearm when prohibited from doing so by an order under [CCP §527.6](#) may be imprisoned in the county jail for up to one year or in state prison and may be subject to a fine of up to \$1000. [Pen C §§273.6\(g\), 12021\(g\)](#).

## 10. [§20.26] Statute's Effect on Other Remedies

The provisions of [CCP §527.6](#) do not apply to any action or proceeding under the [Domestic Violence Prevention Act](#) ([Fam C §§6200–6389](#)) or under the [Rosenthal Fair Debt Collection Practices Act](#) ([CC §§1788–1788.32](#)). [CCP §527.6\(k\)](#). The statute does not preclude a plaintiff from using other civil remedies. [CCP §527.6\(l\)](#).

## 11. [§20.27] Statute Subject to Anti-SLAPP Motion To Strike

A defendant may file a special motion to strike under [CCP §425.16](#), the anti-SLAPP (Strategic Lawsuit Against Public Participation) statute, challenging a petition for injunctive relief under [CCP §527.6](#). Such a motion may not be used, however, to challenge an application for an interim TRO issued, pending a hearing on the petition for injunctive relief. *Thomas v Quintero* (2005) 126 CA4th 635, 646–653, 24 CR3d 619

(petitions for injunctive relief constitute “causes of action” under anti-SLAPP law). For a comprehensive discussion of the anti-SLAPP statute, see California Judges Benchbook: Civil Proceedings—Before Trial (Cal CJER 1995), §12.105.

### C. Temporary Restraining Order and Injunction Prohibiting Workplace Violence (CCP §527.8)

#### 1. [§20.28] Who May Seek Relief

An employer may seek a TRO and an injunction on behalf of an employee who has suffered unlawful violence or a credible threat of violence from any individual in the workplace. CCP §527.8(a). The provisions of the statute apply to public and private employers. CCP §527.8(d). The term “employee” includes volunteers and independent contractors performing services for the employer at the employer’s workplace, members of corporate boards of directors, and elected or appointed public officers. CCP §527.8(d). The plaintiff may appear in the proceeding by counsel or in pro per. CCP §527.8(g). A plaintiff that is a corporation may only appear through counsel. *Merco Constr. Eng’rs v Mun. Court* (1978) 21 C3d 724, 731, 147 CR 631. See *Scripps Health v Marin* (1999) 72 CA4th 324, 333, 85 CR2d 86 (corporate employer is allowed to seek injunction on behalf of employee).

An employer subjected to generalized threats of workplace violence may obtain relief under CCP §527.8 on behalf of an employee who is a logical target of the threats, even if the employee was not specifically identified by the harasser. *USS-Posco Indus. v Edwards* (2003) 111 CA4th 436, 442–444, 4 CR3d 54.

#### 2. [§20.29] Unlawful Violence and Credible Threat of Violence Defined

“Unlawful violence” is assault, battery, or stalking. CCP §527.8(b)(1). It does not include lawful acts of self-defense or defense of others. CCP §527.8(b)(1).

A “credible threat of violence” is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose. CCP §527.8(b)(2). The intent requirement for a true threat is that the defendant intentionally or knowingly communicates the threat; it is not necessary that the defendant intends to, or is able to carry out the threat. *Huntingdon Life Sciences, Inc. v Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 CA4th 1228, 1255–1256, 29 CR3d 521.

➡ JUDICIAL TIP: Courts should be leery of finding that there has been a credible threat of violence when the defendant has not

directly conveyed the threatening words. For example, the Third District Court of Appeal, in an employment retaliation case, acknowledged a lower court’s finding that there was insufficient evidence of a threat for purposes of issuing injunctive relief under CCP §527.8 when the defendant did not convey a threat but merely answered questions put to him by an investigator, and the investigator interpreted his responses as constituting a threat. *Brown v Department of Corrections* (2005) 132 CA4th 520, 33 CR3d 754, 757 (case not final at time of publication).

“Course of conduct” is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. CCP §527.8(b)(3); see *Scripps Health v Marin* (1999) 72 CA4th 324, 336, 85 CR2d 86 (injunction not warranted based on single threat of violence when there was no evidence defendant was likely to commit further acts of violence). It includes following or stalking the employee to or from the workplace, entering the workplace, following the employee during employment hours, making telephone calls to the employee, or sending correspondence to the employee by any means including mail, fax, or e-mail. CCP §527.8(b)(3).

The threat of violence need not be directed at a particular employee. An employer may seek injunctive relief under CCP §527.8 on behalf of any employee who is credibly threatened with unlawful violence, whether or not the defendant identifies the employee. *USS-Posco Indus. v Edwards* (2003) 111 CA4th 436, 442–444, 4 CR3d 54 (evidence of employee’s threats to bring a gun into the workplace and shoot employees against whom he harbored a grudge was sufficient for his former manager to fear for her own safety for purposes of issuing injunction when that manager instigated disciplinary action that led to the employee’s suspension and termination). The court may not issue a TRO or an injunction prohibiting speech or other activities that are constitutionally protected, or protected by CCP §527.3 (specified acts relating to labor disputes) or any other provision of law. CCP §527.8(c).

### 3. [§20.30] Issuance of Temporary Restraining Order

The court may issue a TRO if the employer’s affidavit filed with the petition for an injunction shows, to the court’s satisfaction, reasonable proof that the employee has suffered unlawful violence or a credible threat of violence by the defendant, and that great or irreparable harm would result to the employee. CCP §527.8(e); see CCP §527.8(m) (plaintiff must use Judicial Council form WV-100). Unless otherwise ordered, no memorandum of points and authorities is required. Cal Rules of Ct 363(b). No filing fee may be charged for a petition that alleges the defendant has inflicted or threatened violence against the employee, stalked the

employee, or acted or spoken in any other manner that has placed the employee in reasonable fear of violence, and that seeks a restraining order or injunction restraining stalking, future violence, or threats of violence. [CCP §527.8\(p\)](#).

On a showing of good cause, the court has the discretion to issue a TRO that includes other named family or household members who reside with the employee. [CCP §527.8\(e\)](#). The duration of the TRO may not exceed 15 days, unless otherwise modified or terminated by the court. [CCP §527.8\(e\)](#).

#### **4. Subsequent Hearing**

##### **a. [§20.31] Time for Hearing**

A hearing must be held within 15 days after the petition is filed. [CCP §527.8\(f\)](#); [Cal Rules of Ct 363\(a\)](#).

##### **b. [§20.32] Service on Defendant**

The defendant must be personally served with a copy of the employer's petition for an injunction, any TRO, and notice of hearing of the petition at least five days before the hearing. [CCP §527.8\(h\)](#). Service must be made in the manner provided by law for personal service of the summons in a civil action. [Cal Rules of Ct 363\(c\)](#). For good cause, the court may shorten the time for service. [CCP §527.8\(h\)](#).

##### **c. [§20.33] Defendant's Response**

The defendant may file a response that explains, excuses, justifies, or denies the alleged unlawful violence or credible threats of violence, or may file a cross-complaint for an injunction prohibiting workplace violence. [CCP §527.8\(f\)](#); see [CCP §527.8\(m\)](#) (defendant must use Judicial Council form WV-110); see also [CCP §527.8\(p\)](#) (when filing fee is not required). The response must be filed and delivered to the plaintiff or the plaintiff's attorney no later than 48 hours before the hearing. [Cal Rules of Ct 363\(d\)](#). The defendant may appear in the proceeding by counsel or in pro per. [CCP §527.8\(g\)](#).

##### **d. [§20.34] Continuance**

If the TRO has been issued without notice, the plaintiff must be ready to proceed when the matter first comes up for hearing. [CCP §§527\(d\)\(3\), 527.8\(e\)](#). The defendant is entitled to one continuance for a reasonable period of at least 15 days or any shorter period the defendant requests, to enable the defendant to meet the plaintiff's application. [CCP §527\(d\)\(4\)](#). The TRO remains in effect until the date of the continued hearing. [CCP §527\(d\)\(4\)](#).

**e. [§20.35] Evidence**

At the hearing, the court must receive any relevant testimony, and may make an independent inquiry. [CCP 527.8\(f\)](#). If the defendant is a current employee of the plaintiff-employer, the court must receive evidence concerning the employer’s decision to retain, terminate, or otherwise discipline the defendant. [CCP §527.8\(f\)](#).

*Testimony of mental health practitioner.* Although communications between a patient and a psychotherapist are confidential and privileged under [Evid C §1012](#), the “dangerous patient” exception to the psychotherapist-patient privilege permits disclosure of any threatening communications of the patient if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to himself or herself or to the person or property of another and that disclosure of the communications are necessary to prevent the threatened harm. [Evid C §1024](#).

**5. Issuance of Injunction**

**a. [§20.36] Findings**

If the court finds by clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of violence, the court must issue an injunction prohibiting further unlawful violence or threats of violence. [CCP §527.8\(f\)](#); see Judicial Council form WV-140. The plaintiff must also establish that great or irreparable harm would result to the employee if an injunction is not issued because of the reasonable probability that unlawful violence will occur in the future. *Scripps Health v Marin* (1999) 72 CA4th 324, 332, 335, 85 CR2d 86. Read literally, the language of [CCP §527.8\(f\)](#) appears to provide that once the plaintiff establishes by clear and convincing evidence that the defendant has engaged in violence or made a credible threat of violence, the court must issue an injunction. 72 CA4th at 332. But [CCP §527.8\(f\)](#) must be read to include the requirement that the plaintiff show that great or irreparable harm is likely to occur absent the injunction because the plaintiff is required to make such a showing under [CCP §527.8\(e\)](#) to obtain a TRO. 72 CA4th at 334–335.

**b. [§20.37] Duration of Injunction**

The maximum duration of the injunction is three years. [CCP §527.8\(f\)](#). At any time before its expiration, the plaintiff may apply for renewal of the injunction by filing a new petition. [CCP §527.8\(f\)](#).

**c. [§20.38] Persons Covered**

On a showing of good cause, the court has the discretion to issue an injunction that includes other named family or household members who reside with the employee. [CCP §527.8\(e\)](#).

**d. [§20.39] Forms**

A TRO or injunction issued under [CCP §527.8](#) must be issued on forms adopted by the Judicial Council that have been approved by the Department of Justice. [CCP §527.8\(n\)](#). However, the fact that an order is not issued on such a form does not make it unenforceable. [CCP §527.8\(n\)](#). The court may provide an unofficial translation of a court order issued under [CCP §527.8](#), in a language other than English. [CCP §185\(a\)](#).

**6. [§20.40] Transmission of Order to Law Enforcement Agencies**

The court must order the plaintiff or the plaintiff's attorney to deliver, by the close of the business day on which the order is granted, a copy of each TRO or injunction to the law enforcement agencies that may be called on to enforce the injunction. See [CCP §527.8\(i\)](#) (plaintiff may request transmission to certain agencies but designation of agencies is within court's discretion).

Information on any TRO or injunction relating to harassment or domestic violence issued by a court under [CCP §527.8](#) must be transmitted to the Department of Justice in accordance with [Fam C §6380\(b\)](#). [CCP §527.8\(o\)](#).

**7. [§20.41] Violation of Injunction**

The penalties for any intentional disobedience of any TRO or injunction granted under [CCP §527.8](#) are the same as for any willful disobedience of a TRO or an injunction granted under [CCP §527.6](#). See [CCP §527.8\(k\)](#); discussion in [§20.25](#).

**8. [§20.42] Statute's Effect on Other Remedies**

The TRO and injunction available under [CCP §527.8](#) are in addition to whatever other remedies the employer or affected employee may have against workplace violence. *City of Palo Alto v Service Employees Int'l Union* (2000) 77 CA4th 327, 336, 91 CR2d 500.

**D. [§20.43] Discovery Issues**

As noted in *Thomas v Quintero* (2005) 126 CA4th 635, 24 CR3d 619, in footnote 11,



There is no provision under [section 527.6](#) allowing for discovery, and in any case, under the civil harassment scheme there is insufficient time in which to conduct discovery. (See generally *Byers v. Cathcart*, *supra*, 57 Cal.App.4th at p. 811; *Diamond View Limited v. Herz*, *supra*, 180 Cal. App. 3d 612, 619-620, fn. 8.) [Section 527.6, subdivision \(d\)](#) requires the trial court to “receive any testimony that is relevant” at the hearing. The court in *Schraer* commented in a footnote that this could be in the form of oral or written testimony, including affidavits, declarations or deposition. (*Schraer v. Berkeley Property Owners’ Assn.*, *supra*, 207 Cal. App. 3d at p. 733, fn. 6.) This statement is mystifying inasmuch as no case holds that discovery is allowed under [section 527.6](#), and the general testimonial statute allowing for testimony in the form of affidavits, deposition, or oral testimony was earlier found by the *Schraer* court to be inapplicable to [section 527.6](#) proceedings. (*Berkeley Property Owners’ Assn.*, at p. 731.)

Because of the similarities between [CCP §§527.6](#) and [527.8](#) proceedings, the analysis in *Thomas* should apply to disallow normal civil discovery in a workplace violence proceeding.

#### **E. [§20.44] Firearms Restrictions**

A person subject to a protective order issued under [CCP §527.6](#) or [§527.8](#) cannot own, possess, purchase, receive, or attempt to purchase or receive firearms during the term of the protective order. [CCP §§527.6\(k\)\(1\), 527.8\(j\)\(1\); Pen C §12021\(g\)](#).

*Relinquishment of firearm.* The court must order the defendant to relinquish any firearms he or she owns or possesses. [CCP §§527.6\(k\)\(2\), 527.8\(j\)\(2\), 527.9\(a\)](#). If the defendant is present at the hearing, the court must order relinquishment of all firearms in the respondent’s immediate possession and control, or subject to the respondent’s possession or control, within 24 hours of the order. [CCP §527.9\(b\)](#). If the respondent is not present at the hearing, then relinquishment must occur within 48 hours after being served with the order. [CCP §527.9\(b\)](#).

To comply with the relinquishment order, the respondent may either ([CCP §527.9\(b\)](#)):

- Sell the firearm to a licensed gun dealer as specified in [Pen C §12071](#); or
- Surrender control of the firearm to the local law enforcement agency.

*Note:* The local law enforcement agency may charge a storage fee that does not exceed the actual cost of storage. “Actual cost” means expenses directly related to taking possession of a firearm, storing the firearm, and



surrendering possession of the firearm to a licensed dealer or to the person relinquishing the firearm. [CCP §527.9\(c\)](#).

The defendant must file a receipt of sale or surrender of any firearms with the court within 72 hours after receiving the order. [CCP §527.9\(b\)](#). Defendants may file with the court Judicial Council form CH-145 (if subject to [CCP §527.6](#) protective order) or WV-145 (if subject to [CCP §527.8](#) protective order) as proof of sale or surrender. See Appendix.

The following exemptions to the firearms restrictions apply ([CCP §527.9\(f\)](#)):

- *Employment.* If the defendant can show (1) a particular firearm is necessary as a condition of continued employment, and (2) the current employer cannot reassign the respondent to a position that does not require a firearm. If the court grants this exemption, then the court must order that the firearm will be in the respondent's possession only during scheduled work hours and travel to and from work.
- *Peace Officer.* If carrying a firearm by a peace officer is necessary as a (1) condition of employment and (2) personal safety depends on carrying the firearm, then the court may allow the officer to carry a firearm on or off duty if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Before making this finding, the court must require the peace officer to undergo a psychological evaluation and may require the defendant to enter into a counseling or other remedial treatment program to deal with any propensity for domestic violence.

During the period of the relinquishment order, the respondent is entitled to make one sale of all firearms that are in the possession of local law enforcement. A licensed gun dealer, who presents a bill of sale, shall be given possession of those firearms, at the storage location, within five days of presenting the bill of sale. [CCP §527.9\(g\)](#).

*Requirements of restraining order.* The restraining order requiring a person to relinquish a firearm under [CCP §527.9\(b\)](#) must state the following on its face ([CCP §527.9\(d\)](#)):

- The defendant is prohibited from owning, possessing, purchasing, or receiving a firearm for the duration of the protective order and that any firearm in the defendant's immediate possession or control must be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed with the court within a specified period of receipt of the order.
- The expiration date for relinquishment.

*Modification of order.* The defendant has a right to petition the court at a later date for modification of the order. [CCP §527.9\(d\)](#).

*Expiration of relinquishment order.* If the firearms were stored with local law enforcement, then the firearms must be returned to the respondent within 5 days after expiration of the order unless the law enforcement agency determines that (1) the firearm has been stolen, (2) the defendant is in a prohibited class for possession of firearms under [Pen C §§12021 and 12021.1](#) and [Welf & I C §§8100 and 8103](#), or (3) there is another restraining order against the defendant. If the respondent cannot get the firearm back and is the legal owner, the respondent is entitled to sell it to a licensed gun dealer. [CCP §527.9\(e\)](#).

*Penalty for violation of firearm restrictions.* A defendant who purchases or receives, or attempts to purchase or receive a firearm, knowing that he or she is prohibited from doing so by a protective order, is guilty of a public offense punishable by imprisonment in county jail for up to one year, or in state prison for 16 months or two or three years, and/or a fine of up to \$1000. [CCP §§527.6\(k\)\(3\), 527.8\(j\)\(3\)](#); [Pen C §§273.6\(g\)\(1\), 12021\(g\)\(1\)](#).

A defendant who owns or possesses a firearm, knowing that he or she is prohibited from doing so by a protective order, is guilty of a misdemeanor punishable by imprisonment in county jail for up to one year and/or a fine of up to \$1000. [CCP §§527.6\(k\)\(3\), 527.8\(j\)\(3\)](#); [Pen C §§273.6\(g\)\(1\), 12021\(g\)\(2\)](#).

#### **F. [§20.45] Special Provisions Regarding Plaintiffs or Defendants Who Are Minors**

A minor 12 years of age or older, accompanied by a duly appointed and acting guardian ad litem, may appear in court without an attorney for the limited purpose of obtaining or opposing a request for a TRO or injunction prohibiting harassment under [CCP §527.6](#) or workplace violence under [CCP §527.8](#). [CCP §374\(a\)](#). The minor may also appear without counsel, a guardian, or a guardian ad litem. [CCP §372\(b\)\(1\)\(A\)–\(B\)](#). However, the court, either on motion or in its own discretion, and after considering reasonable objections by the minor to the appointment of specific individuals, may appoint a guardian ad litem to help the minor obtain or oppose the order. [CCP §372\(b\)\(1\)](#). This appointment may not delay the issuance or denial of the order. [CCP §372\(b\)\(1\)](#). In determining whether to appoint a particular guardian ad litem, the court must consider whether the minor and the guardian have divergent interests. [CCP §372\(b\)\(1\)](#).

A proceeding brought by or against a minor for an injunction under [CCP §527.6](#) or [§527.8](#) will ordinarily be heard in the superior court. See [CCP §374.5](#). However, if the minor bringing the action or against whom

the action is brought has previously been adjudged a dependent child or ward of the juvenile court, the matter must be heard in the juvenile court having jurisdiction over the minor. [CCP §374.5](#).

When a minor who is seeking an order under [CCP §527.6](#) or [§527.8](#) initially appears in court without a guardian or guardian ad litem, and resides with a parent or guardian, the court must send a copy of the order to at least one parent or guardian designated by the minor. [CCP §372\(b\)\(2\)](#). The court has the discretion not to send a copy of the order if the court determines that this notification would be contrary to the minor's best interest. [CCP §372\(b\)\(2\)](#). The court need not send the order to more than one parent or guardian. [CCP §372\(b\)\(2\)](#).

#### **IV. [§20.46] SCRIPT: ADVISEMENTS TO PARTIES AT COMMENCEMENT OF CIVIL HARASSMENT HEARING**

##### **OPENING REMARKS**

This is the civil harassment hearing calendar. I am Judge \_\_\_\_\_, and I will be hearing most, if not all, of your cases when they are called for hearing today. Before the calendar is called, I would like to spend some time informing you of the law that applies in civil harassment cases because most of you are representing yourselves and may not have a complete and accurate understanding of the law that applies in these cases.

Requests for an injunction to prohibit civil harassment are a creature of statute in California. This means that the Legislature has passed specific laws governing these types of cases. Whether the plaintiff is granted an injunction today will, if your case goes to a hearing, be determined solely by whether the plaintiff proves his or her case according to the requirements set out in the statute. If the plaintiff proves his or her case according to these requirements, the plaintiff should expect to be granted an injunction. If the plaintiff is unable to prove his or her case, the plaintiff should not expect to be granted an injunction.

##### **WHAT CONSTITUTES HARASSMENT**

The statute defines certain terms in ways that are not always consistent with their common usage. Harassment, for example, in common usage, is understood to be just about anything that bothers a person. This is not the definition of "harassment" in the statute. The statute defines "harassment" as unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. If the conduct the plaintiff is complaining about does not meet this statutory definition, then the conduct is not

harassment for the purposes of these proceedings no matter how much the conduct may bother the plaintiff.

Let's look closer at this definition. If the conduct the plaintiff is complaining about is not violence or a credible threat of violence, then the defendant's conduct must be knowing and willful to be harassment. If your evidence as the plaintiff is that you think the defendant is crazy and does not know what he or she is doing, and that you believe the defendant should be taken under restraint to the nearest mental health facility, then you may have some legal problems in showing the court that the defendant's conduct is knowing and willful under the statutory definition.

The conduct, other than violence, or threat of violence, must be part of a course of conduct before it may be considered civil harassment. "Course of conduct" has its own definition in the statute, which we will look at in a moment.

The conduct about which the plaintiff complains must be directed at a specific individual, that is, the plaintiff, before the conduct may be considered to be actionable civil harassment. If the conduct is not directed toward the plaintiff, but rather toward a group, organization, or location, then the plaintiff may not be able to prove civil harassment.

The conduct about which the plaintiff complains must serve no legitimate purpose in order to constitute civil harassment. If the plaintiff admits to owing money to the defendant, then it is not civil harassment for the defendant to call the plaintiff on a reasonably consistent basis to ask when the plaintiff will satisfy this debt. If the plaintiff admits to holding property of the defendant, then it is not civil harassment for the defendant to come to the plaintiff's residence to try to retrieve this property. There are many situations in which the conduct about which plaintiffs complain serves a legitimate purpose. If that is the case, then the plaintiff is not entitled to relief under the civil harassment statute.

The statute also requires the plaintiff to show that the conduct about which the plaintiff is complaining would cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress to the plaintiff. By including this requirement, the Legislature has indicated that there are going to be cases in which the court finds that the plaintiff is very distressed but that a reasonable person under the same circumstances would not be substantially emotionally distressed. The cases that raise this issue most commonly are ones that involve family—a parent, for example, who is suing his or her child, or a child who is suing his or her parent, claiming harassment and asking the court to grant an injunction to prevent the family member from ever contacting the plaintiff. I have parents and children, and I know that there are times when you can get very upset

with your family. However, if I, the judge, conclude, for example, that it is unreasonable for a plaintiff to say that he or she never wants his or her parent or child to send the plaintiff a birthday or Christmas present, or to call the plaintiff at Thanksgiving or Easter, I might conclude in general that the plaintiff is not being reasonable, and the plaintiff might not get relief even though he or she may be very distressed.

#### “COURSE OF CONDUCT”

As I said before, the phrase “course of conduct” has its own definition. The statute defines course of conduct as a pattern of conduct over a period of time, however short, that shows a continuity of purpose. To be entitled to relief, the plaintiff in any case not involving violence or a credible threat of violence must show a pattern of conduct over time. As a matter of law, a one-time, nonviolent incident is not sufficient for a civil harassment injunction because the plaintiff has failed to prove a pattern of conduct over time.

The statute also says that constitutionally protected activity is not included within the meaning of “course of conduct.” That means that I cannot improperly take away the defendant’s constitutional rights by any injunction I might issue. Whether you like it or not, whether you agree with it or not, we all enjoy certain constitutional rights in this society, including free speech rights, associational rights, privacy rights, due process rights, and property rights. For example, I cannot improperly take away the property and due process rights of a person by ordering him or her out of an apartment he or she rents from the plaintiff landlord. The plaintiff’s remedy in such a case is to file an unlawful detainer proceeding to terminate the tenancy without the tenant’s consent.

There are also privileges that exist in our society that I cannot take away by what I do as the judge in a civil harassment case. One privilege that comes up fairly often is the privilege to complain to governmental organizations. Plaintiffs frequently file civil harassment suits when the defendant has made reportedly improper complaints about the plaintiff to law enforcement authorities. Calling law enforcement authorities to report a suspected crime is a privileged phone call. There is nothing I can or would do to stop someone from making such a call. If the person who makes such a call knowingly makes a false report, that person has committed a crime and may be prosecuted and, if convicted, sent to jail. The actual phone call, however, is privileged and cannot be enjoined. This is also true of calls to other governmental entities, such as the IRS, the INS, and child protective services. Any plaintiff who is asking for such conduct to be enjoined is not making a reasonable request.

## BURDEN OF PROOF

Although petitions for an injunction to prohibit civil harassment are a civil matter, they do not have the normal civil burden of proof. The normal civil burden of proof is very easy to understand. It is called a preponderance of the evidence and really means that the judge or jury must weigh the evidence presented and, unless the plaintiff's evidence preponderates—that is, it amounts to over 50 percent—the judge or jury should deny the plaintiff's claim and find in the defendant's favor. This is not the standard, however, that the Legislature has set out for courts to follow in civil harassment cases. In these cases, a judge cannot grant a plaintiff an injunction unless the plaintiff proves his or her case by clear and convincing evidence.

There is no numerical standard for clear and convincing evidence as there is for a preponderance of the evidence. Clear and convincing evidence is a very high standard of proof, but it is not as high as the standard of proof beyond a reasonable doubt required in a criminal case. I cannot tell you beforehand what will or will not be clear and convincing evidence, but I can give you an example of what probably will not be clear and convincing evidence. If the sole evidence of alleged threats by the defendant is the plaintiff's statement under oath that the threats were made, but the defendant under oath denies making these threats, and there are no corroborating witnesses or any corroborating evidence, then it is unlikely that I will find that the plaintiff's case has been proved by clear and convincing evidence.

## COURT'S INDEPENDENT INQUIRY

The statute expressly provides that the judge may make an independent inquiry at the hearing. If your case is called for a hearing, please realize that I will be making an independent inquiry. I will be asking specific questions to one or both parties, and perhaps to their witnesses. Once I have finished asking all the questions I want answered, I will allow each party to present any other evidence each may have and, if the evidence is relevant, I will consider it before I rule on the request for an injunction.

## DURATION OF INJUNCTION

If I decide to issue an injunction, the maximum duration of the injunction is three years. If you receive an injunction and still need protection at the end of three years, you may apply for a renewal of the injunction by filing a new petition within three months before the injunction is due to expire.

### VIOLATION OF INJUNCTION

If I decide to issue an injunction and the defendant violates this injunction, this violation is a crime. It may be reported to the police and prosecuted like any other crime. If the police choose not to take action, the plaintiff has the additional remedy of filing and serving an order to show cause why the defendant should not be held in contempt for violating the court's order. Because the defendant is facing a potential jail term on such a contempt charge, the defendant is entitled to court-appointed counsel if the defendant cannot afford counsel, and the contempt must be proved beyond a reasonable doubt.

### PROOF OF SERVICE ON DEFENDANT

If your case comes on for hearing and the defendant is not present in the courtroom, please know that the first thing I am going to do after calling your case is to check the court file to confirm that there is a proof of personal service on the defendant in the file. If there is no proof of service or if the proof of service is defective, then I do not have personal jurisdiction over the defendant and cannot listen to your case. All I can do is continue—that is, postpone—your case, so that you can properly serve the defendant. If I continue your case and you have been issued a temporary restraining order, this restraining order will remain in effect until the new hearing date.

### CONCLUDING REMARKS

The clerk and the bailiff will now take roll to see who is here and who is not here. Please remain in your seats and answer when your name is called.

### **V. [§20.47] ADDITIONAL REFERENCES**

California Judges Benchbook: Civil Proceedings—Before Trial, chap 14 (Cal CJER 1995).

6 Witkin, California Procedure, *Provisional Remedies* (4th ed 1997).





## **Appendix**

### **CIVIL HARASSMENT FORMS**

1. Request for Orders to Stop Harassment (Civil Harassment) (CH-100\*) [ch100.pdf](#)
2. Request and Order for Free Service of Restraining Order (Domestic Violence or Civil Harassment (Sexual Assault or Stalking)) (CH-101\*) [ch101.pdf](#)
3. Answer to Request for Orders to Stop Harassment (Civil Harassment) (CH-110\*) [ch110.pdf](#)
4. Notice of Hearing and Temporary Restraining Order (CLETS) (Civil Harassment) (CH-120\*) [ch120.pdf](#)
5. Reissue Temporary Restraining Order (Civil Harassment) (CH-125\*) [ch125.pdf](#)
6. Proof of Personal Service (Civil Harassment) (CH-130) [ch130.pdf](#)
7. Proof of Service by Mail (Civil Harassment) (CH-131) [ch131.pdf](#)
8. What Is Proof of Service? (Civil Harassment) (CH-135) [ch135.pdf](#)
9. Restraining Order After Hearing to Stop Harassment (CLETS) (Civil Harassment) (CH-140\*) [ch140.pdf](#)
10. Proof of Firearms Turned In or Sold (Civil Harassment) (CH-145) [ch145.pdf](#)
11. Can a Civil Harassment Restraining Order Help Me? (CH-150) [ch150.pdf](#)
12. How Can I Answer a Request for Orders to Stop Harassment? (Civil Harassment) (CH-151) [ch151.pdf](#)

\*Adopted for mandatory use by all courts

### **WORKPLACE VIOLENCE FORMS**

1. Petition of Employer for Injunction Prohibiting Violence or Threats of Violence Against Employee (Workplace Violence) (WV-100\*) [wv100.pdf](#)
2. Response to Petition of Employer for Injunction Prohibiting Violence or Threats of Violence Against Employee (Workplace Violence) (WV-110\*) [wv110.pdf](#)
3. Order to Show Cause and Temporary Restraining Order (CLETS) (Workplace Violence) (WV-120\*) [wv120.pdf](#)
4. Proof of Personal Service (Workplace Violence) (WV-130) [wv130.pdf](#)
5. Proof of Service by Mail of Completed Response (Workplace Violence) (WV-131) [wv131.pdf](#)

6. Proof of Service by Personal Delivery of Completed Response (Workplace Violence) (WV-132) [wv132.pdf](#)
7. Order After Hearing on Petition of Employer for Injunction Prohibiting Violence or Threats of Violence Against Employee (CLETS) (Workplace Violence) (WV-140\*) [wv140.pdf](#)
8. Proof of Sale or Turning In of Firearms (WV-145) [wv145.pdf](#)
9. Instructions for Petitions to Prohibit Workplace Violence (WV-150\*) [wv150.pdf](#)

\*Adopted for mandatory use by all courts.

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